FOR MYSORE STATE

Home (1953) Department.

R SERIES.

G.O. NO. 3953

Dated 19.11.53

Passed

[Despatch Abstract.]

Criminal justice - Appeal against acquittal - S. Kamar Dt. - C.C. 38/53 / S.D.M, Coondapur - Applin. - received.

122790

No. D.Dis. 54571/53

Office of the
Director of Controlled Commodities,
Chepauk, Madras, Dated: 9-10-'53.

From

Sri N.S. Mani, I.C.S.,
Director of Controlled Commodities.

To—

The Secretary to Government,
Development Department,
Fort St. George,
MADRAS.

Sir,

SUB: TEXTILES - Mill Cloth- South Kanara Dt. Piad Souza Dealer in cloth- sale of mill cloth without a licence - Acquittal by the Sub Divisional Magistrate -Coondapur - Appeal against.

REF: Letter No.11920-53-T1.dt.28-9-53 from the Collector of South Kanara.

-:-

1. I enclose herewith a copy of the letter from the Collector of South Kanara cited above, together with his letter in triplicate addressed to Government in original.

2. The Collector's letter to Government is self-explanatory. The Collector considers that the acquittal of the dealer by the Sub-Divisional Magistrate, Coondapur is not justifiable either in law or on facts. He, therefore, recommends the filing of an appeal against the acquittal of the dealer.

3. It is admitted that the materials seized from the shop of the dealer are all mill-made cloth. The question for consideration before the Court was whether the goods were intended for personal consumption, resale or for manufacture of readymade apparel. At the time the goods were seized Cl.28(4) of the Cotton Textiles Control Order '48, restricting the quantity of cloth which may be kept in private possession by any person, had been deleted and was not, therefore, operative. The dealer could, therefore, have stored any quantity he liked for his personal consumption. The other alternatives are: (i) storage for resale or (ii) storage for the making of readymade garments. Taking the latter into consideration, the location of the shop and the daily turnover were such as to make it improbable that as much as 679 yards would be used on the two machines with the dealer. This possibility must therefore be ruled out.

4. Storing of cloth for sale without a licence is an offence and it is not always necessary to prove sale before bringing in the charge. When a large quantity of mill-made cloth was found on the premises of the dealer and was not properly accounted for, the prosecution should be deemed to have discharged its responsibility; and it is not incumbent on their part to prove any positive acts of selling. I am inclined to prefer the Asst. Public Prosecutor's opinion to that of the Public Prosecutor in this case.

5. I support the recommendation of the Collector that an appeal should be filed against the acquittal of the dealer in this case.

s.s.9.10. for Director of Controlled Commodities.

Government of Madras
Home Department

Endorsement No. I 96009 Courts II/53 Dated 27/10/53

Referred to the Public Prosecutor, Madras for remarks.

J. Subbuswamy
27 Oct 53
Deputy Secretary to Govt

By
24.10.53

To

The Public Prosecutor
Madras.
(with records in original -
to be returned with reply)

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COPY

Copy of letter No. C.No. 11920-53-T1. dt. 28.9.53 from the Collector of South Kanara, to the Director of Controlled Commodities, Madras.

-:-

SUB: CRIMINAL JUSTICE: (South Kanara) appeal against acquittal in C.C.No.38/53 on the file of the Sub Divisional Magistrate, Coondapur-Contravention of Clause 4(1) of the Madras Cloth (Dealers) Control Order 1948.

Not pursue

REF: 1. Govt. Home. Department Memo. No.185690-Prisons III/52-1 dated 4.11.52 and
2. G.O.Ms.No.2127, Home Judl. dated 18.9.48.

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I forwad herewith in triplicate a letter addressed to the Government recommending the filing of an appeal against the acquittal in C.C.No. 38/53 on the file of the Sub Divisional Magistrate Coondapur.

2. The seizures involved in this case totalled in all 679 yards of 52 different varieties of mill cloth and they were seized from the shop, as storage of mill cloth for sale without obtaining a licence is a contravention of clause 4(1) of the order.

3. The accused did not produce any bills or invoices for the purchase of these goods at a time when every wholesaler or retailer was bound to issue such bills for all sales made by him.

4. The judgment of acquittal in this case was passed on 12.8.53 and a report against the acquittal should reach the Government within two months from the date of the judgment. I therefore request you to examine this case and submit my report to the Government with your remarks by 12.10.53 under intimation to me.

True copy. Yours faithfully,

s.s. 9.10.

S. Srinivasan

Superintendent. 9.10.53

5

Ref.11220/53-H. S.Kanara Collector's Office,
(By Regd.Post) Mangalore dated 23.9.53.

From

Sri A.Krishnaswamy, B.Sc.(Hons), I.A.S.,
Collector of South Kanara.

To

The Secretary to Government,
(Home Department) Fort St.George,
Madras 9.

Through

The Director of Controlled Commodities,
Mount Road, Madras
(In triplicate).

Sir,

Criminal Revision - (South Kanara) - appeal against acquittal in C.C.No.F/53 on the file of the Sub Divisional Magistrate Coondapur - contravention of clause 4(1) of the Madras Cloth (Dealers) control order 1943 - Proposals.

The Textile Control Officer, South Kanara filed a complaint against the accused before the Sub Divisional Magistrate Coondapur in C.C.No.38/53 for an offence under clause 4(1) of the Madras Cloth (Dealers) Control Order, 1943 read with section 7 of the Essential Commodities Temporary Powers Act, 1946 as amended. The matter of the case briefly is as follows:

On 9.4.53, the Textile Inspector, Udipi inspected the cloth shop of the accused and found in it stocked and exhibited in a wooden almyra with glass shutters, a show case and a frame, 679 yards of mill cloth of 52 varieties along with handloom and powerloom cloth. As the mill cloth was exhibited conspicuously for the easy view of the public passing by the road, the cloth was deemed to be intended for sale and seized by the Textile Inspector, as it amounted to a contravention of clause 4(1) of the order. The accused had also an account book with him which contain several entries of sale of cloth (mill or otherwise not mentioned), duties, amounts, etc. This account book was also seized and some of the persons named therein as the purchasers were examined.

[illegible] these persons although before the Textile Inspector [illegible] having purchased mill cloth from the accused, all of them deposed in court in a manner hostile to the prosecution. Four out of the 62 varieties seized (Ex-P2(a) are full and unpacked pieces each containing 18, 20, 21 and 20 yards each. One of the items seized relates to the one dhoti and one dhoti. The accused did not produce any cash memo or bills for the purchase of these 679 yards, but explained that no bills were issued at all by him by the dealers from whom he purchased. He also that all these pieces of mill cloth were purchased by him from different dealers at different centres and that none of them had issued to him any cash memos or bills and that he did not also insist the issue of such bills memos. The accused however admitted that the daily sales from his shop never exceeded at any time Rs.30/-. He also expressed that the one handu and the mill cloth were brought for his personal use and kept in the shelf in the shop by oversight and that, the rest of the varieties were brought by him and kept for making ready made garments and sale.

2. The Sub Divisional Magistrate, Coonoor examined the witnesses for the prosecution and framed charges against the accused both for sale and storage for sale of mill cloth under clause 4(1) of the Madras Cloth (Dealers) Control Order, 1945. There was no further cross examination of the P.W's and no defence witnesses were also examined, though the accused had desired both; and strangely enough, the S.D.M. later acquitted the accused of both the charges, observing that there was no test purchase in this case by P.W.1, that the evidence of P.W.3 does not clearly establish that the cloth in the transaction was mill made, that the entries in the account book also do not show that the cloth involved was mill made and that the prosecution has not proved the offence for storage for sale also.

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pp. 47— 111 below

3. I enclose a copy of the judgment together with two copies of the depositions of the P.Ws etc. I also enclose copies of the opinions expressed by the A.P.P.I and the Public Prosecutor, Mangalore. The Public Prosecutor is of opinion that accused's plea that he had stored all the cloth in his shop only for sale of ready made garments had not been met by the prosecution evidence.

P 13-17 below

4. The accused had admittedly been a cloth merchant during the previous control in 1946, holding a valid mill cloth licence. He had not taken out a mill cloth licence over since the present control was introduced in 1948. All the pieces of cloth including one dhoti and the Mundu which were seized only from the shop of the accused were conspicuously exhibited in the Almyrah with glass shutters, etc. Though in his shop are tailors having sewing machines it is highly improbable that in the neighbouring villages as distant, so much quantity of mill cloth besides handloom and powerloom cloth would be stored by any person exclusively for making ready made garments and sale. If the dhoti and the Mundu were intended for his personal use as now alleged, the shop was not the place where they should have been kept. There are entries in the account book to show some sales of Mundus and dhotis.

5. In the Madras Cloth (Dealers) Control Order, 1948, it is defined that the cloth referred to in that Order would mean any type of cloth manufactured either wholly from cotton or partly from cotton and partly from any other material and would not include ready made clothing, other than dhotis, Sarees, Towels, etc. — Vide clause 3 of the Madras Cloth (Dealers) Control Order, 1948, G.O.Ms. No.4717 Dev. dt.16.9.48. The control order exempts only ready made clothing. It would apply to dhotis, Mundus and other pieces of mill cloth (not converted into garments) seized in this case.

not known

I agree with the A.P.P.I. Mangalore that the order of acquittal in this case is not justifiable either

on facts or law. I accordingly recommend that the question of filing an appeal against the acquittal in this case may be taken up after consulting the Public Prosecutor, Madras if necessary.

Yours faithfully,

2/10 28/9

COLLECTOR.

28.9.53

Assistant Public Prosecutor's Opinion

The accused was a licensee in mill cloth in 1946, but not thereafter. Admittedly he is a cloth merchant having his shop just by the side of the road in Udiyavar. P.W.s 1 to 5 have un-equivocally sworn to the fact that the accused has been selling cloth, though they are not sure whether it is mill or hand-loom. P.W.1 found some hand-loom mill cloth kept for sale at the time of his inspection on 20.11.1952. The same day, P.W.1 also found a large quantity totalling upto 679 yards of mill cloth of various categories including a new mill dhoti, a mundu and four full unopened pieces of suiting. These were apparently stored not kept for sale in the shop as they were found exhibited in a wooden almirah with glass shutters, a show case and a steel trunk kept underneath the show case. The show case was visible to the passers-by along the road in front of the shop

2. The quantity of ready made garments found in the shop is estimated by P.W.1 as about Rs.50/- only P.W.1 is definite that at the time of his inspection neither the accused nor his son were preparing ready-made garments from the mill cloth.

The contention of the accused is that he had kept his large stock of mill cloth in his shop for preparing ready made garments and that the mill dhoti and mundu found in the shop were intended for his personal use. This explanation is unbelievable on the very face of it. There was hardly any justification for keeping the new mill dhoti and mundu intended for his personal use in the shop along with the other items of mill cloth. The rough account Book Ex.P4 contains a number of entries for sale of cloth such a vesti, suiting mundu, etc But do not specify whether they were hand-loom power-loom or mill made. This omission is very significant and much against the bonafides of the accused. The monthly sale in the shop of the accused, even according to his own statement Ex.P5 is only Rs.30/--Rs.40/-. Hence it is found too much to presume and accept the accused's explanation that his large quantity of mill

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clo.. was in enf d.r.y re.ard. r..dy ..ld garments.

4. P.'s 5 to 8 t.. .. .. .. hostil.. to the prosecution ex.. against dly p.rs.. wh.. had purchased cloth fro.. the accused as corroborated by t.. c.tri.. in Ex. P4. In court, P.W.3 is not sur.. whether th.. purchase made by him was hand-loom or mill made t.. .. his statement Ex.P6 before P.W.1 he had definitely st.. that it was mill cloth. P.W.4, though in court has st.. that the s.irting purchased by him was Khadder but cloth as represented by the accused, has also sworn in court that this st.. nt Ex.P.10 had been correctly recorded by P.W.1 and that he had st.. ted therein that the cloth purchased by him was mill made. P.W.5 has given evidence in court that he had purchased mill cloth from the accused, that he might have purchased mill cloth from the accused, even though earlier he had st.. that that he was unable to say the type of cloth he had been purchasing from the accused.

5. There was no further cross-examination of P.W.s in this case nor any defence adduced. The very fact that the learned Sub Divisional Magistrate had framed a charge, clearly shows that he had not accepted the explanation of the accused regarding the large stock of cloth found in the shop. Yet, it is strange that the learned S.D.M. should have thought fit to acquit the accused of the charge without any further evidence in rebuttal of the prosecution case.

6. Viewed from all aspects and taking into account all the circumstances of the case, I feel that the evidence was sufficient to convict the accused for having stored mill cloth for sale without a licence and that the acquittal is not justifiable either on facts or law.

(True copy)

3/10

COLLECTOR

28/7/52

PUBLIC PROSECUTOR's CHIT -

The accused Riad Souza was charged under clause 4 (1) of the Madras Cloth (Dealers) Control Order 1948. On 27.11.1952 when the shop of the accused was searched 679 yds. of different kinds of mill cloth was found in his shop kept in such a way that passers by on the public road could see the cloth. Then and there the accused was questioned with regard to the 679 yds. of mill cloth found in his possession. He gave an explanation that he and his sons are tailors and the mill cloth was only for preparing ready made garments which alone he sold and not the mill cloth as such. He also explained that a dhoti and a mundu kept in the shop were bought by him for his own use and left in his shop by oversight. It is admitted by the prosecution witnesses that the accused and his son are tailors having two sewing machines (PW3) and that they were selling ready made garments (PW1)

As against this, to prove that the mill cloth was being sold by the accused P.Ws 2,4 and 5 have been examined. These witnesses do not speak to that fact. Of these P.'s 3 and 5 have not even been treated as hostile. Nor has P.W.4 been properly cross-examined.

Under these circumstances the Sub Divisional Magistrate seems to have given the accused the benefit of the doubt and acquitted him.

Though it is rather suprising that the Sub Divisional Magistrate should have acquitted the accused without further cross-examination of the P.'s or adducing defence, after he had framed a charge, it cannot be said from the evidence on record that the matters is free from reasonable doubt. It is not likely that any appeal against acquittal will be admitted in the circumstances of the case.

(True copy)

4/10 28/9

COLLECTOR

28/9/53

C.F. 32 (a)—. 184,468—15-11-52.

19

Judicial Department | Received ..... Registered .....

From (Name) Sri V.T.Rangaswami Ayyangar, B.A.B.L.,
Designation Public Prosecutor,
Station Madras.

To
The Secretary to Government,
Home Department, Madras.

ASSISTANT SECRETARY TO GOVERNMENT
HOME DEPARTMENT

Enclosures: Opn. No. 222/53, dated 2nd Novr. 1953

Sir,

Sub: Appeal against acquittal - C.C.32/53, S.D.M. Coondapur - Forwarding opinion.

With reference to Endorsement No.196009 Cts. II/53-1, Home, dated 27-10-53, I give below my opinion in the above matter.

2. The papers received for reference are returned herewith.

Opinion.

The accused in the case was charged for an offence under Cl(4)(1) of the Madras Cloth Dealers Control Order and in the opinion of the learned Magistrate the circumstances warranted the inference that the possession of cloth in this case apart

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from its not being fully established that it was mill cloth was kept by him only for the purpose of making ready made garments. In my opinion this view is correct and the opinion of the learned Public Prosecutor who suggested that no appeal against acquittal was feasible is also right. Under those circumstances no appeal against acquittal could be successfully filed.

V. T. Rangaswamy

Public Prosecutor. 2/11

Rd 2/11

Home Department

C.no. 196009 Cls I/53 G.O. Rt. No. 3953 Dated 19.11.53.

Criminal Justice – Appeal against acquittal – S. Arcot dt. C.C. 32/53 on the file of the Sub Divisional Magistrate, Coondapur – Application – declined.

Read: From the Director of Controlled Commodities D.Dis 54571/53 dated 9.10.53.

2) From the P.P., Madras Opn. no. 222/53 dated 2.11.53

ORDER

The Government do not consider it advisable to prefer an appeal against the acquittal of the accused in C.C. 32 of 53 on the file of the Sub Divisional Magistrate, Coondapur.

2. A copy of the opinion of the P.P. Madras is forwarded to the Director of Industries & Commerce, Madras for information.

sd/ 9.11.53

for 19/11/53

To

The Director of Industries & Commerce, Madras

(with (2) in original and a copy of pp 19 & 20 C.F)

2) Copy to P.P., Madras.

Note:

The draft order above is in accordance with the opinion of the P.P., Madras at pp. 19 & 20 C.F.

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2) If the Government differ from the P.P. Madras and propose to prefer an appeal against the acquittal of the accused in C.C. 32/53, S.D.M., Coondapur the Advocate General, Madras should be consulted before orders preferring an appeal are issued."

the date of judgement 12.8.53. Vide 'A' at p 51 ante
three months' time expires on 11.11.53
Six months time expires on 11.2.54
I.C.L. may see before issue

9.11.53 — 10/11/53 — I.C.L.

9.11.53

1 time (Court I)
196009/53-2
G.C. & L. Deptt. (P2) — 10/11/53
133138

The draft order overleaf and the notes of Home Deptt. on pp 1-2 above may be perused. It is seen from the reports of the P.P. and the Public Prosecutor, an appeal in the present case won't stand on legal grounds. This Deptt. may accept the draft order overleaf subject to the slight alterations communicated in pencil.

THIRD ASST. SECRETARY 11 NOV 1953 GOVT. OF MADRAS

pp 19-20 ante

After orders are passed the file may be returned to Home Deptt.

12.11.53 — 12/11/53 — The draft overleaf may be accepted in this Deptt

12/11/53

ASSISTANT SECRETARY TO GOVERNMENT HOME DEPARTMENT

206348/53
12.11.53 — 13.11.53 — Home

Dev. Sec. O. 133138 P/53-1
13.11.53

C.No-123790 M/53

Development (M) Dept.

Sub: Textiles-Mill Cloth-South Kanara Dt.-Piad Souza-Sale of mill cloth without licence-Acquittal by S.D.M.-Appeal

Ref: From the D.C.C.D.Dis.54571/53 dated 9-10-53.

To A.D.

The current file may be perused.

2. It was found that 679 yards of mill cloth were stocked and exhibited in Sri.Piad Souza's shop at Udiyavar, South Kanara District. Sri.Piad Souza held no licence under M.C.(D).C. Order 1948 for the shop. He was therefore prosecuted before the S.D.M.,Coondapur for violation of clause 4 (1) of the M.C.(D)C. Order, 1948. The accused stated that he stored the cloth for making ready made garments. The S.D.M. after examining the P.Ws' framed charges against the accused both for sale and storage for sale of mill cloth under clause 4 (1) of the M.C.(D)C. Order 1948. The S.D.M. later acquitted the accused observing that the prosecution did not prove the offence for storage of mill cloth for sale and sale of mill cloth without a licence. The Collector of S.Kanara has stated that there was no cross examination of P.Ws after the charges were framed and that no defence witnesses were examined though the accused desired both.

3. The Collector has recommended that the question of prefering an appeal against the S.D.M's order of acquittal may be taken up for the reasons stated at pp.9-11 c.f. The D.C.C. also supports the recommendations of the Collector for the reasons stated at 'A' on p.1 c.f.

4. The accused and his son were tailors and had two sewing machines. Though some witnesses admitted purchase of cloth from the accused they deposed in the Court that they were not sure whether the cloth purchased by them

P.T.O.

2(W)

was hand-loom cloth or mill cloth. One witness deposed that he purchased Khaddar long cloth. The points against the accused are that he had so much as 679 yards of mill cloth in his shop which would have costed Rs.1000, that he had in his shop a mill made dhoti and a mundu which could not be utilised for garment making, and that the prosecution witnesses turned out hostile and were not cross examined. The magistrate gave the accused the benefit of doubt and acquitted him. It appears that an appeal in the circumstances may not be successful. For orders whether the D.C.C.'s view may be accepted and the case sent to Home for further action or the Govt hold that no appeal need be made

17/10/53

The case may be forwarded to Home Dept. for examination in the usual manner in consultation with the P.P., Madras.

"Appeals against acquittals are dealt with in Home Dept"

20/10/53

21.X.53 Home

Home

Home Dept

Please see the note of the Dep A.S above. This is a proposal for filing an appeal against the acquittal by the S.D.M. Coondapur, of the accused in C.C. No. 98/53 on his file. In the usual manner the opinion of the P.P. Madras may be obtained. The draft endorsement on p2 cf is for approval. (The judgment was delivered by the S.D.M. on 12.8.53 and three months time expires on 11.11.53)

Approved

27/10/53.

4.10.53

Rect on 22/10/53.

Dis U.O.No.123790 M/53-1

Mad. P.C./10/53

ASSISTANT SECRETARY TO GOVERNMENT 23 HOME DEPARTMENT

c/p p3 cf

Hom End 19600/c5/53 dt. 27.10.53

To Madras

End (in original)

p.50 cf

p.7 cf

P.S.C.1 19600

196009/53

10/17/11

Home (courts I) Dept

The note of S.C.L. (P2) at p 2 ante may be perused. The G.O. at p 1 ante may issue with the alterations made in pencil therein after perusal by M.(Law)

14.11.53 MM

14.11.53. Srinivasamurthy.

TNS Rajagopalan
16.11.53

M(Law) K.D. Krishnan
17-11-53